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Subject: BAPCPA 90 days or 180 days

There appears to be some confusion in the e-mail chain below about the role that the six month provision in IRC 6503(h)(2) and the 90 day provision appearing in the flush language below B.C. 507(a)(8)(G) play in bankruptcy tax law administration. This will, hopefully, clarify the difference between the two. In pertinent part, I.R.C. 6503(h)(2) governs the suspension of the period of limitations on collection under IRC 6502 when a bankruptcy case exists. It provides that the period of limitations on collection shall be suspended for the period the Service is prohibited from collection by reason of the bankruptcy case and for 6 months thereafter.

In practical terms, IRC 6502(h)(2) means that when the Service cannot collect a tax liability because bankruptcy law forbids it (for example, when the automatic stay is in effect, or in the case of a Chapter 11 bankruptcy, during the post-confirmation period in which (1) the Service's claim is allowed, (2) the confirmed plan provides for full payment of the tax debt, and (3) the plan is not in substantial default) then the period of limitations on collection will not run during that period. And once it resumes running, the Service can add 6 months to the unexpired time (number of days) remaining on the original statute as of the bankruptcy petition date, and that total is added to the discharge or dismissal date (or the date the stay was lifted) to establish the new CSED. See IRM 5.9.4.2(3).

The flush statutory language that follows B.C. 507(a)(8)(G), but is not limited to subparagraph (a)(8)(G), deals with a different aspect of bankruptcy tax administration. This section is concerned with the calculating the "lookback" periods for the classification of priority claims. All of the time periods in paragraph B.C. 507(a)(8) for determining the priority status, which include income taxes (the 3 year period and the 240 day period), employment taxes (3 year period), and excise taxes (3 year period) are suspended while collection is stayed or prohibited during the following periods, plus 90 days:

- While the automatic stay is in effect in a prior bankruptcy proceeding
- During the pendency of a collection due process (CDP) request, hearing, and appeal
- During the existence of a confirmed bankruptcy plan

In summary, the flush language following B.C. 507(a)(8)(G) suspends the running of the "lookback periods" that help define priority taxes if any of these 3 events took place within those periods.

As a caveat, since the *Young* decision was handed down, we no longer argue in any case that the suspension of the priority lookback periods includes the 6 month period, as some circuits had held prior to *Young*. For bankruptcy cases filed before October 17, 2005, there is no add-on period. For bankruptcy cases filed on or after October 17, 2005, the 90 day period is the applicable period to add to the suspension of the priority periods under the flush language of BC 507(a)(8).

We hope this helps. If you have further questions or comments, please
contact _____ at _____.
